June 1, 2018

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Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* filing, IB Docket No. 16-408

Dear Ms. Dortch:

Telesat Canada (Telesat) and WorldVu Satellites Limited d/b/a OneWeb (OneWeb) respond to the letter recently filed by Viasat, Inc. (Viasat) in this proceeding.[1]

Contrary to statements by Viasat, the band-splitting rule adopted in the *NGSO Order*[2] does not result in "reliable and predictable" access to spectrum.[3] In fact, and as Telesat and OneWeb have demonstrated in previous submissions, a rule requiring systems to divide spectrum equally whenever there is an in-line event, defined as geometric alignment where $\Delta T/T$ exceeds 6%, is unworkable and creates uncertainty for all systems about spectrum availability.[4] The resulting uncertainty is a problem now, as processing round applicants continue to develop their systems. Nor does the band-

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[1] *See* Letter from John P. Janka, Counsel to Viasat to Marlene H. Dortch, Secretary, FCC, IB Docket No. 16-408 (Apr. 23, 2018) ("*Viasat Letter*"). Viasat has subsequently submitted a misguided attack on the joint demonstration made by Telesat and OneWeb that the $\Delta T/T$ of 6% threshold cannot form the basis of real-time sharing. *See* Letter from John P. Janka, Counsel to Viasat to Marlene H. Dortch, Secretary, FCC, IB Docket No. 16-408 (May 14, 2018). A separate response to the May 14 Viasat filing will be submitted.

[2] *See Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 7809 (2017) ("*NGSO Order*").

[3] *Viasat Letter* at 1.

[4] *See, e.g.,* Letter from Telesat Canada and WorldVu Satellites Limited to FCC, IB Docket No. 16-408, April 10, 2018.

splitting rule result in equal access to spectrum. Rather, depending on system design, some systems will be required to share spectrum more of the time than others. Indeed, the band-splitting rule can be manipulated by system designs that give some systems undue leverage in coordination discussions and disadvantage competing constellations.

Viasat also asserts that if the Commission decides to apply ITU date priority to resolve NGSO-NGSO coordination issues, it should apply ITU date priority to resolve GSO-NGSO coordination issues too. However, under the FCC's Ka-band plan, there is no coordination between NGSO and GSO systems. Viasat has articulated no compelling reason for discarding the Ka-band plan and the equivalent power flux-density limits underlying the existing GSO-NGSO sharing regime in most of Ka-band.[5] Viasat's proposal therefore appears to be directed at the 18.8-19.3 GHz and 28.6-29.1 GHz bands, in which NGSO networks are primary and GSO networks are secondary under the Commission's Ka-band plan.

There are two serious flaws with Viasat's proposal.

First, Viasat's proposal is procedurally flawed because it amounts to an untimely petition for reconsideration of the *NGSO Order*. The Commission expressly declined to grant co-equal status to GSO fixed-satellite service (FSS) in the 18.8-19.3 GHz and 28.6-29.1 GHz bands, holding that "preserving the 18.8-19.3 GHz and 28.6-29.1 GHz bands for more intensive use by burgeoning NGSO FSS systems will serve the public interest."[6] Although Viasat has petitioned for reconsideration of the *NGSO Order*, its petition did not address this issue. A proposal to revisit the issue now is time-barred.

Second, ITU date priority is a mechanism for resolving coordination issues between co-primary systems. As NGSO networks are primary and GSO networks are secondary in the United States in the 18.8-19.3 GHz and 28.6-29.1 GHz bands, ITU date

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[5] *NGSO Order* at ¶ 39 ("We expect that EPFD limits will continue to be useful in facilitating sharing and will likely be developed in additional bands in the future.").

[6] *NGSO Order* at ¶ 14.

priority is irrelevant for sharing between an NGSO system and a GSO network in the United States.[7]

Viasat has not demonstrated that grant of OneWeb's pending petition for reconsideration is not in the public interest.[8] The Commission should therefore align its NGSO-NGSO sharing rules with the ITU, and employ ITU date priority as the default sharing regime between NGSOs absent a coordination agreement. Accordingly, Telesat and OneWeb respectfully request the Commission to grant the OneWeb Petition.

Respectfully submitted,

/s/
Henry Goldberg
Attorney for Telesat Canada

/s/
Brian Weimer
Counsel for OneWeb

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[7] Similarly, ITU date priority has no application in the United States as between NGSO and GSO systems in other parts of the Ka-band in which GSO networks are primary and NGSO networks are secondary. (*Id.* at ¶ 39 and 47 CFR § 25.289.)

[8] *See* Petition for Reconsideration of WorldVu Satellites Limited, IB Docket No. 16-408 (filed Feb. 20, 2018) ("OneWeb Petition").